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Protection of persons in the event of disasters

Texts and titles of the draft articles adopted by the Drafting Committee on first reading

Protection of persons in the event of disasters

Article 1 [1][1]
Scope

The present draft articles apply to the protection of persons in the event of disasters.

Article 2 [2]
Purpose

The purpose of the present draft articles is to facilitate an adequate and effective response to disasters that meets the essential needs of the persons concerned, with full respect for their rights.

Article 3 [3]
Definition of disaster

"Disaster" means a calamitous event or series of events resulting in widespread loss of life, great human suffering and distress, or large-scale material or environmental damage, thereby seriously disrupting the functioning of society.

Article 4
Use of terms

For the purposes of the present draft articles:

[1] The numbers of the draft articles, as previously provisionally adopted by the Commission, are indicated in square brackets.

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(a) "affected State" means the State in the territory or otherwise under the jurisdiction or control of which persons, property or the environment are affected by a disaster;

(b) "assisting State" means a State providing assistance to an affected State at its request or with its consent;

(c) "other assisting actor" means a competent intergovernmental organization, or a relevant non-governmental organization or any other entity or individual external to the affected State, providing assistance to that State at its request or with its consent;

(d) "external assistance" means relief personnel, equipment and goods, and services provided to an affected State by assisting States or other assisting actors for disaster relief assistance or disaster risk reduction;

(e) "relief personnel" means civilian or military personnel sent by an assisting State or other assisting actor for the purpose of providing disaster relief assistance or disaster risk reduction;

(f) "equipment and goods" means supplies, tools, machines, specially trained animals, foodstuffs, drinking water, medical supplies, means of shelter, clothing, bedding, vehicles and other objects for disaster relief assistance or disaster risk reduction.

Article 5 [7]
Human dignity

In responding to disasters, States, competent intergovernmental organizations and relevant non-governmental organizations shall respect and protect the inherent dignity of the human person.

Article 6 [8]
Human rights

Persons affected by disasters are entitled to respect for their human rights.

Article 7 [6]
Humanitarian principles

Response to disasters shall take place in accordance with the principles of humanity, neutrality and impartiality, and on the basis of non-discrimination, while taking into account the needs of the particularly vulnerable.

Article 8 [5]
Duty to cooperate

In accordance with the present draft articles, States shall, as appropriate, cooperate among themselves, and with the United Nations and other competent intergovernmental organizations, the International Federation of Red Cross and Red Crescent Societies and the International Committee of the Red Cross, and with relevant non-governmental organizations.

Article 9 [5 *bis*]
Forms of cooperation

For the purposes of the present draft articles, cooperation includes humanitarian assistance, coordination of international relief actions and communications, and making available relief personnel, equipment and goods, and scientific, medical and technical resources.

Article 10 [5 *ter*]
Cooperation for disaster risk reduction

Cooperation shall extend to the taking of measures intended to reduce the risk of disasters.

Article 11 [16]
Duty to reduce the risk of disasters

1. Each State shall reduce the risk of disasters by taking the necessary and appropriate measures, including through legislation and regulations, to prevent, mitigate, and prepare for disasters.

2. Disaster risk reduction measures include the conduct of risk assessments, the collection and dissemination of risk and past loss information, and the installation and operation of early warning systems.

Article 12 [9]
Role of the affected State

1. The affected State, by virtue of its sovereignty, has the duty to ensure the protection of persons and provision of disaster relief and assistance on its territory.

2. The affected State has the primary role in the direction, control, coordination and supervision of such relief and assistance.

Article 13 [10]
Duty of the affected State to seek external assistance

To the extent that a disaster exceeds its national response capacity, the affected State has the duty to seek assistance from among other States, the United Nations, other competent intergovernmental organizations and relevant non-governmental organizations, as appropriate.

Article 14 [11]
Consent of the affected State to external assistance

1. The provision of external assistance requires the consent of the affected State.

2. Consent to external assistance shall not be withheld arbitrarily.

3. When an offer of assistance is extended in accordance with the present draft articles, the affected State shall, whenever possible, make its decision regarding the offer known.

Article 15 [13]
Conditions on the provision of external assistance

The affected State may place conditions on the provision of external assistance. Such conditions shall be in accordance with the present draft articles, applicable rules of international law, and the national law of the affected State. Conditions shall take into account the identified needs of the persons affected by disasters and the quality of the assistance. When formulating conditions, the affected State shall indicate the scope and type of assistance sought.

Article 16 [12]
Offers of external assistance

In responding to disasters, States, the United Nations, and other competent intergovernmental organizations have the right to offer assistance to the affected State. Relevant non-governmental organizations may also offer assistance to the affected State.

Article 17 [14]
Facilitation of external assistance

1. The affected State shall take the necessary measures, within its national law, to facilitate the prompt and effective provision of external assistance regarding, in particular:

(a) civilian and military relief personnel, in fields such as privileges and immunities, visa and entry requirements, work permits, and freedom of movement; and

(b) equipment and goods, in fields such as customs requirements and tariffs, taxation, transport, and disposal thereof.

2. The affected State shall ensure that its relevant legislation and regulations are readily accessible, to facilitate compliance with national law.

Article 18
Protection of relief personnel, equipment and goods

The affected State shall take the appropriate measures to ensure the protection of relief personnel, equipment and goods present in its territory for the purpose of providing external assistance.

Article 19 [15]
Termination of external assistance

The affected State and the assisting State, and as appropriate other assisting actors, shall consult with respect to the termination of external assistance and the modalities of termination. The affected State, the assisting State, or other assisting actor wishing to terminate shall provide appropriate notification.

Article 20
Relationship to special or other rules of international law

The present draft articles are without prejudice to special or other rules of international law applicable in the event of disasters.

Article 21 [4]
Relationship to international humanitarian law

The present draft articles do not apply to situations to which the rules of international humanitarian law are applicable.

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Expulsion of aliens

Texts and titles of the draft articles adopted by the Drafting Committee on second reading

Expulsion of aliens

Part One
General provisions

Article 1[1]
Scope

1. The present draft articles apply to the expulsion by a State of aliens present in its territory.

2. The present draft articles do not apply to aliens enjoying privileges and immunities under international law.

Article 2
Use of terms

For the purposes of the present draft articles:

(a) "expulsion" means a formal act or conduct attributable to a State, by which an alien is compelled to leave the territory of that State; it does not include extradition to another State, surrender to an international criminal court or tribunal, or the non-admission of an alien to a State;

(b) "alien" means an individual who does not have the nationality of the State in whose territory that individual is present.

[1] The numbers of the draft articles, as previously provisionally adopted by the Commission, are indicated in square brackets.

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Article 3
Right of expulsion

A State has the right to expel an alien from its territory. Expulsion shall be in accordance with the present draft articles, without prejudice to other applicable rules of international law, in particular those relating to human rights.

Article 4
Requirement for conformity with law

An alien may be expelled only in pursuance of a decision reached in accordance with law.

Article 5
Grounds for expulsion

1. Any expulsion decision shall state the ground on which it is based.

2. A State may only expel an alien on a ground that is provided for by law.

3. The ground for expulsion shall be assessed in good faith and reasonably, in the light of all the circumstances, taking into account in particular, where relevant, the gravity of the facts, the conduct of the alien in question or the current nature of the threat to which the facts give rise.

4. A State shall not expel an alien on a ground that is contrary to its obligations under international law.

Part Two
Cases of prohibited expulsion

Article 6
Rules relating to the expulsion of refugees

The present draft articles are without prejudice to the rules of international law relating to refugees, as well as to any more favourable rules or practice on refugee protection, and in particular to the following rules:

(a) a State shall not expel a refugee lawfully in its territory save on grounds of national security or public order;

(b) a State shall not expel or return (*refouler*) a refugee in any manner whatsoever to the frontiers of territories where the person's life or freedom would be threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion, unless there are reasonable grounds for regarding the person as a danger to the security of the country in which he or she is, or if the person, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.

Article 7
Rules relating to the expulsion of stateless persons

The present draft articles are without prejudice to the rules of international law relating to stateless persons, and in particular to the rule that a State shall not expel a stateless person lawfully in its territory save on grounds of national security or public order.

Article 8 [9]
Deprivation of nationality for the purpose of expulsion

A State shall not make its national an alien, by deprivation of nationality, for the sole purpose of expelling him or her.

Article 9 [10]
Prohibition of collective expulsion

1. For the purposes of the present draft article, collective expulsion means expulsion of aliens, as a group.

2. The collective expulsion of aliens is prohibited.

3. A State may expel concomitantly the members of a group of aliens, provided that the expulsion takes place after and on the basis of an assessment of the particular case of each individual member of the group in accordance with the present draft articles.

4. The present draft article is without prejudice to the rules of international law applicable to the expulsion of aliens in the event of an armed conflict involving the expelling State.

Article 10 [11]
Prohibition of disguised expulsion

1. Any form of disguised expulsion of an alien is prohibited.

2. For the purposes of the present draft article, disguised expulsion means the forcible departure of an alien from a State resulting indirectly from an action or an omission attributable to the State, including where the State supports or tolerates acts committed by its nationals or other persons, intended to provoke the departure of aliens from its territory other than in accordance with law.

Article 11 [12]
Prohibition of expulsion for the purpose of confiscation of assets

The expulsion of an alien for the purpose of confiscating his or her assets is prohibited.

Article 12 [13]
Prohibition of resort to expulsion in order to circumvent an ongoing extradition procedure

A State shall not resort to the expulsion of an alien in order to circumvent an ongoing extradition procedure.

Part Three
Protection of the rights of aliens subject to expulsion

Chapter I
General provisions

Article 13 [14]
Obligation to respect the human dignity and human rights of aliens subject to expulsion

1. All aliens subject to expulsion shall be treated with humanity and with respect for the inherent dignity of the human person at all stages of the expulsion process.

2. They are entitled to respect for their human rights, including those set out in the present draft articles.

Article 14 [15]
Prohibition of discrimination

The expelling State shall respect the rights of the alien subject to expulsion without discrimination of any kind on grounds such as race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, birth or other status, or any other ground impermissible under international law.

Article 15 [16]
Vulnerable persons

1. Children, older persons, persons with disabilities, pregnant women and other vulnerable persons who are subject to expulsion shall be considered as such and treated and protected with due regard for their vulnerabilities.

2. In particular, in all actions concerning children who are subject to expulsion, the best interests of the child shall be a primary consideration.

Chapter II
Protection required in the expelling State

Article 16 [17]
Obligation to protect the right to life of an alien subject to expulsion

The expelling State shall protect the right to life of an alien subject to expulsion.

Article 17 [18]
Prohibition of torture or cruel, inhuman or degrading treatment or punishment

The expelling State shall not subject an alien subject to expulsion to torture or to cruel, inhuman or degrading treatment or punishment.

Article 18 [20]
Obligation to respect the right to family life

The expelling State shall respect the right to family life of an alien subject to expulsion. It shall not interfere arbitrarily or unlawfully with the exercise of such right.

Article 19
Detention of an alien for the purpose of expulsion

1. (a) The detention of an alien for the purpose of expulsion shall not be arbitrary nor punitive in nature.

(b) An alien detained for the purpose of expulsion shall, save in exceptional circumstances, be separated from persons sentenced to penalties involving deprivation of liberty.

2. (a) The duration of the detention shall be limited to such period of time as is reasonably necessary for the expulsion to be carried out. All detention of excessive duration is prohibited.

(b) The extension of the duration of the detention may be decided upon only by a court or, subject to judicial review, by another competent authority.

3. (a) The detention of an alien subject to expulsion shall be reviewed at regular intervals on the basis of specific criteria established by law.

(b) Subject to paragraph 2, detention for the purpose of expulsion shall end when the expulsion cannot be carried out, except where the reasons are attributable to the alien concerned.

Article 20 [30]
Protection of the property of an alien subject to expulsion

The expelling State shall take appropriate measures to protect the property of an alien subject to expulsion, and shall, in accordance with the law, allow the alien to dispose freely of his or her property, even from abroad.

Chapter III
Protection in relation to the State of destination

Article 21
Departure to the State of destination

1. The expelling State shall take appropriate measures to facilitate the voluntary departure of an alien subject to expulsion.

2. In cases of forcible implementation of an expulsion decision, the expelling State shall take the necessary measures to ensure, as far as possible, the safe transportation to the State of destination of the alien subject to expulsion, in accordance with the rules of international law.

3. The expelling State shall give the alien subject to expulsion a reasonable period of time to prepare for his or her departure, having regard to all circumstances.

Article 22
State of destination of aliens subject to expulsion

1. An alien subject to expulsion shall be expelled to his or her State of nationality or any other State that has the obligation to receive the alien under international law, or to any State willing to accept him or her at the request of the expelling State or, where appropriate, of the alien in question.

2. Where the State of nationality or any other State that has the obligation to receive the alien under international law has not been identified and no other State is willing to

accept the alien, that alien may be expelled to any State where he or she has a right of entry or stay or, where applicable, to the State from where he or she has entered the expelling State.

Article 23
Obligation not to expel an alien to a State where his or her life would be threatened

1. No alien shall be expelled to a State where his or her life would be threatened on grounds such as race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, birth or other status, or any other ground impermissible under international law.

2. A State that does not have the death penalty shall not expel an alien to a State where the alien has been sentenced to the death penalty or where there is a real risk that he or she will be sentenced to death, unless it has previously obtained an assurance that the death penalty will not be imposed or, if already imposed, will not be carried out.

Article 24
Obligation not to expel an alien to a State where he or she may be subjected to torture or to cruel, inhuman or degrading treatment or punishment

A State shall not expel an alien to a State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Chapter IV
Protection in the transit State

Article 25
Protection in a transit State of the human rights of an alien subject to expulsion

A transit State shall protect the human rights of an alien subject to expulsion, in conformity with its obligations under international law.

Part Four
Specific procedural rules

Article 26
Procedural rights of aliens subject to expulsion

1. An alien subject to expulsion enjoys the following procedural rights:

(a) the right to receive notice of the expulsion decision;

(b) the right to challenge the expulsion decision, except where compelling reasons of national security otherwise require;

(c) the right to be heard by a competent authority;

(d) the right of access to effective remedies to challenge the expulsion decision;

(e) the right to be represented before the competent authority; and

(f) the right to have the free assistance of an interpreter if he or she cannot understand or speak the language used by the competent authority.

2. The rights listed in paragraph 1 are without prejudice to other procedural rights or guarantees provided by law.

3. An alien subject to expulsion has the right to seek consular assistance. The expelling State shall not impede the exercise of this right or the provision of consular assistance.

4. The procedural rights provided for in this article are without prejudice to the application of any legislation of the expelling State concerning the expulsion of aliens who have been unlawfully present in its territory for a brief duration.

Article 27
Suspensive effect of an appeal against an expulsion decision

An appeal lodged by an alien subject to expulsion who is lawfully present in the territory of the expelling State shall have a suspensive effect on the expulsion decision when there is a real risk of serious irreversible harm.

Article 28
International procedures for individual recourse

An alien subject to expulsion shall have access to any available procedure involving individual recourse to a competent international body.

Part Five
Legal consequences of expulsion

Article 29
Readmission to the expelling State

1. An alien lawfully present in the territory of a State, who is expelled by that State, shall have the right to be readmitted to the expelling State if it is established by a competent authority that the expulsion was unlawful, save where his or her return constitutes a threat to national security or public order, or where the alien otherwise no longer fulfils the conditions for admission under the law of the expelling State.

2. In no case may the earlier unlawful expulsion decision be used to prevent the alien from being readmitted.

Article 30 [31]
Responsibility of States in cases of unlawful expulsion

The expulsion of an alien in violation of the expelling State's obligations set forth in the present draft articles or in any other rule of international law entails the international responsibility of that State.

Article 31 [32]
Diplomatic protection

The State of nationality of an alien subject to expulsion may exercise diplomatic protection in respect of the alien in question.

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Subsequent agreements and subsequent practice in relation to the interpretation of treaties

Texts and titles of draft conclusions 6 to 10 provisionally adopted by the Drafting Committee on 27 and 28 May and on 2 and 3 June 2014

Draft Conclusion 6
Identification of subsequent agreements and subsequent practice

1. The identification of subsequent agreements and subsequent practice under article 31, paragraph 3, requires, in particular, a determination whether the parties, by an agreement or a practice, have taken a position regarding the interpretation of the treaty. This is not normally the case if the parties have merely agreed not to apply the treaty temporarily or agreed to establish a practical arrangement (*modus vivendi*).

2. Subsequent agreements and subsequent practice under article 31, paragraph 3, can take a variety of forms.

3. The identification of subsequent practice under article 32 requires, in particular, a determination whether conduct by one or more parties is in the application of the treaty.

Draft Conclusion 7
Possible effects of subsequent agreements and subsequent practice in interpretation

1. Subsequent agreements and subsequent practice under article 31, paragraph 3, contribute, in their interaction with other means of interpretation, to the clarification of the meaning of a treaty. This may result in narrowing, widening, or otherwise determining the range of possible interpretations, including any scope for the exercise of discretion which the treaty accords to the parties.

2. Subsequent practice under article 32 can also contribute to the clarification of the meaning of a treaty.

3. It is presumed that the parties to a treaty, by an agreement subsequently arrived at or a practice in the application of the treaty, intend to interpret the treaty, not to amend or to modify it. The possibility of amending or modifying a treaty by subsequent practice of the parties has not been generally recognized. The present draft conclusion is without prejudice

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to the rules on the amendment or modification of treaties under the Vienna Convention on the Law of Treaties and under customary international law.

Draft Conclusion 8
Weight of subsequent agreements and subsequent practice as a means of interpretation

1. The weight of a subsequent agreement or subsequent practice as a means of interpretation under article 31, paragraph 3, depends, inter alia, on its clarity and specificity.

2. The weight of subsequent practice under article 31, paragraph 3 (b), depends, in addition, on whether and how it is repeated.

3. The weight of subsequent practice as a supplementary means of interpretation under article 32 may depend on the criteria referred to in paragraphs 1 and 2.

Draft Conclusion 9
Agreement of the parties regarding the interpretation of a treaty

1. An agreement under article 31, paragraph 3 (a) and (b), requires a common understanding regarding the interpretation of a treaty which the parties are aware of and accept. Though it shall be taken into account, such an agreement need not be legally binding.

2. The number of parties that must actively engage in subsequent practice in order to establish an agreement under article 31, paragraph 3 (b), may vary. Silence on the part of one or more parties can constitute acceptance of the subsequent practice when the circumstances call for some reaction.

Draft Conclusion 10
Decisions adopted within the framework of a Conference of States Parties

1. A Conference of States Parties, under these draft conclusions, is a meeting of States parties pursuant to a treaty for the purpose of reviewing or implementing the treaty, except if they act as members of an organ of an international organization.

2. The legal effect of a decision adopted within the framework of a Conference of States Parties depends primarily on the treaty and any applicable rules of procedure. Depending on the circumstances, such a decision may embody, explicitly or implicitly, a subsequent agreement under article 31, paragraph 3 (a), or give rise to subsequent practice under article 31, paragraph 3 (b), or to subsequent practice under article 32. Decisions adopted within the framework of a Conference of States Parties often provide a non-exclusive range of practical options for implementing the treaty.

3. A decision adopted within the framework of a Conference of States Parties embodies a subsequent agreement or subsequent practice under article 31, paragraph 3, in so far as it expresses agreement in substance between the parties regarding the interpretation of a treaty, regardless of the form and the procedure by which the decision was adopted, including by consensus.